No. 293

In the Supreme Court of the United States

OCTOBER TERM, 1952

UNEXCELLED CHEMICAL CORPORATION, FORMERLY UNEXCELLED MANUFACTURING COMPANY, INC., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES

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I

In express and direct conflict with the decisions of the United States Courts of Appeals for the Fourth and Fifth Circuits in *Lance, Inc.* v. *United States,* 190 F. 2d 204, certiorari denied, 342 U. S. 896, rehearing denied, 342 U. S. 915, and *United States* v. *Lovknit Manufacturing Co., Inc.,* 189 F. 2d 454, certiorari denied, 342 U. S. 896, rehearing denied, 342 U. S. 915, the court below has held that the two-year statute of limitations in section 6 of the Portal-to-Portal Act of 1947 is not applicable to actions by the United States under the Walsh-Healey Public Contracts

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Act, at least where child labor violations are concerned.[1]

The substantial practical importance of the issues here raised in the administration and enforcement of the Walsh-Healey Act has already been set forth in the Government's petition for a writ of certiorari in the *Lance* case, No. 293, October Term, 1951, pp. 7–12. Those problems are now magnified by the squarely opposed holdings of the Fourth and Fifth Circuits, on the one hand, and the Third Circuit, on the other. Unless this conflict is resolved, both Government and industry will, at the least, be subjected to avoidable expenses and delays of litigation, and an unjustifiable discrimination to litigants in different jurisdictions will result.

While we regard the decision of the court below as correct, we believe the conflict among the circuits and the importance of the questions call for an authoritative decision by this Court. We do not oppose, therefore, the granting of the petition.

II

In the event that the petition is granted, we suggest that the Court may wish to vacate its previous orders denying certiorari and rehearing in the *Lance* and *Lovknit* cases, *supra*. Subsequent announcement by the Third Circuit of its disagreement with the Fourth and Fifth Circuits would

[1] The *Lance* case involved only child labor violations; *Lovknit* involved both child labor violations and failure to pay proper overtime compensation (see R. 55).

seem to provide an appropriate basis for this action. Cf. *Clark* v. *Manufacturers Trust Co.*, 337 U. S. 953, 338 U. S. 241, 242; *Stone* v. *White*, 300 U. S. 643. But an additional special ground for reviewing the *Lovknit* decision exists in the fact that it dealt with overtime as well as child labor violations whereas the present case involves only the latter. If this petition is granted, the Government will urge that the decision be affirmed on grounds which relate to wage as well as child labor violations. Moreover, piecemeal disposition of the questions at issue will serve only to postpone the day of certainty with respect to the correct administrative practice. Although the petition for rehearing in *Lance* and *Lovknit* was denied in the last term of Court, any question of the power to act because of the expiration of the term would seem to be removed by 28 U. S. C. 452, enacted in the 1948 revision of the Judicial Code. We do not suggest that, under 28 U. S. C. 452, decided cases should indefinitely remain open for reconsideration, but since the previous denial of the petition for rehearing was during the current year (less than nine months ago) we submit that it may well be appropriate for the Court to exercise its discretion to grant review here in view of the peculiar circumstances. Compare *Zap* v. *United States*, 328 U. S. 624, 329 U. S. 824, 330 U. S. 800; *Stone* v. *White*, *supra*.

Respectfully submitted.

ROBERT L. STERN,
Acting Solicitor General.

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